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SENATE BILL 2983

By Gilbert

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29; Title 40, Chapter 11 and Title 62, relative to bail bonds and the regulation of bail bondsmen.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-11-124, is amended by adding the following as a new subsection (a) and by redesignating subsequent subsections accordingly:

(a) It is unlawful for any person to act as, or advertise or represent to be, a bondsman or professional bondsman without holding a valid license issued by the commission under this chapter.

SECTION 2. Tennessee Code Annotated, Section 40-11-301, is amended by adding the following as a new, appropriately designated subsection:

( ) Professional bondsmen shall in all instances comply with the licensure requirements of §40-11-124 and title 62, chapter 45.

SECTION 3. Tennessee Code Annotated, Title 62, is amended by adding the following as a new chapter 45:

**Section 62-45-101.**

(a) There is created in the division of regulatory boards the Tennessee bail bondsmen commission for issuing licenses to professional bail bondsmen.

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(b) The commission shall be composed of five (5) members. The term of each member shall be three (3) years.

(1) Three (3) members of the commission shall be professional bail bondsmen. Each member shall have been actively and principally engaged as a professional bail bondsman for a period of not less than five (5) years next preceding the appointment, shall be of recognized standing as a bail bondsman, and shall be at least thirty (30) years of age and of good moral character.

(2) One (1) member shall be a duly elected district attorney general, to be appointed by the governor from a list of no fewer than five (5) nominees submitted by the Tennessee district attorneys general conference; and

(3) One (1) member of the commission shall not be employed as a professional bail bondsman. Such member shall be at least thirty (30) years of age and of good moral character, and shall be appointed from the state at large.

(c) The governor, in making appointments of the professional bail bondsmen members to the commission, shall ensure that each grand division of the state is represented.

(d) All members of the commission shall be appointed by the governor. In making appointments to the commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority.

(e) Each member shall hold over after the expiration of the member's term until a successor shall have been duly appointed and qualified.

(f) The governor may remove any member of the commission for misconduct, incompetence, or willful neglect of duty.

#### **Section 62-45-102.**

(a) Each member of the commission shall receive a certificate of appointment from the governor before entering upon the discharge of the duties of office.

(b) The commission, or any committee thereof, shall be entitled to the services of the attorney general and reporter, in connection with the affairs of the commission.

(c) The commission may prefer a complaint for violation of this chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of the state to enforce the provisions of this chapter and title 40, chapter 11, and collect the penalties provided herein.

(d) Complaints shall be prosecuted in the name of the Tennessee bail bondsman commission.

#### **Section 62-45-103.**

(a) Immediately upon their qualification, the commission shall meet and organize by selecting from among its members a chair and such other officers as considered necessary, and may do all things necessary and convenient for carrying into effect the provisions of this chapter.

(b) The commission has the power to make such bylaws, rules and regulations as it shall consider necessary that are not inconsistent with the provisions of this chapter or other general laws of the state.

(c) The commission shall adopt a seal for its use, which shall bear thereon the words "Tennessee Bail Bondsman Commission," and the executive secretary of the commission shall have care and custody of such seal.

(d) Copies of all records and papers in the office of the commission shall be received in evidence in all courts and with like effect as the originals.

(e) The commission has the authority to enforce the continuing education requirements and standards for individual licensees compiled in title 40, chapter 11, part 4.

#### **62-45-104.**

(a) The commission shall meet at least one (1) time each quarter of every calendar year for the purpose of transacting such business as may properly come before it.

(b) Special meetings of the commission shall be held at such times as the commission may provide in the bylaws it may adopt.

(c) Three (3) members shall constitute a quorum at a commission meeting.

(d) Due notice of each meeting and the time and place thereof shall be given each member in such manner as the bylaws may provide.

**Section 62-45-105.**

The director of the division of regulatory boards in the department of commerce and insurance, or the director's designee, shall serve as executive secretary for the commission, and shall provide all administrative functions for the commission.

**Section 62-45-106.**

(a) (1) The executive secretary of the commission shall keep a register of all applicants for license, showing for each the date of application, name, place of business, place of residence, and whether the license was granted or refused.

(2) The register shall be prima facie evidence of all matters recorded therein.

(b) (1) The executive secretary shall also prepare during each even-numbered year a roster showing the names and places of business and residences of all licensed professional bail bondsmen.

(2) Such roster shall be printed, in accordance with the rules, regulations, policies and procedures of the state publications committee, by the commission.

**Section 62-45-107.**

(a) Any individual who desires a license as a professional bail bondsman shall submit an application to the commission on the prescribed form. The application shall be accompanied by a nonrefundable examination fee as set by the commission, and satisfactory proof that the applicant has complied with the provisions of title 40, chapter 11.

(b) The commission may require such other proof, through the application or otherwise, as it shall deem desirable as to the honesty, trustworthiness, integrity, reputation, and competency of the applicant for licensure as a professional bail bondsman.

(c) The commission shall issue to a qualified applicant a license and pocket card upon receipt of the appropriate fee as set by the commission. The license shall be conspicuously displayed at all times in the office of the licensee.

(d) All licenses issued pursuant to this chapter shall expire on June 30 of each odd-numbered year, and shall be invalid on that date unless renewed. Renewal of such licenses may be effected at any time during the months of May and June preceding the date of expiration by payment of the appropriate license fee as set by the commission.

(e) If a licensee fails to renew a license on or before its expiration date, the commission may, in its discretion, renew the license upon application within two (2) months thereafter. The application shall be accompanied by the prescribed fee plus a penalty as set by the commission. Any person wishing to renew a license later than two (2) months after its expiration shall reapply for licensure; provided, that the commission may, in its discretion, reinstate a license subject to the applicant's compliance with such reasonable conditions as the commission may prescribe, including payment of an additional reasonable fee to be set by the commission.

(f) When fees are remitted by mail to the commission, the date of payment shall be determined by the official postmark of such mail.

(g) No license issued by the commission shall authorize the licensee to engage in business at any location other than that set forth on the license. A licensee shall immediately notify the commission in writing in the event of a change of business location. The written notice shall be accompanied by the current license and pocket card, and a fee as set by the commission.

**Section 62-45-108.**

(a) The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, hold a hearing as hereinafter provided and investigate the actions of any professional bail bondsman, or any person who shall assume to act in such capacity; provided, that such complaint with the evidence, documentary or otherwise, presented in connection therewith, makes out a prima facie case.

(b) The commission may suspend, revoke or refuse to renew any license issued under this chapter where such license has been obtained by false or fraudulent representations, or for any of the following causes:

- (1) Making any substantial misrepresentation;
- (2) Pursuing a continued and flagrant course of misrepresentation or making false promises through bail bonding agents or advertising or otherwise;
- (3) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, or commingling funds of others with the licensee's own;
- (4) Receiving valuable consideration from any person for services performed in violation of this chapter;
- (5) Being convicted in a court of competent jurisdiction of this or any other state, or of the United States, of a criminal offense involving moral turpitude or a felony;
- (6) Violating any provision of this chapter, or any rule or regulation duly promulgated thereunder;
- (7) Failing to furnish voluntarily to all interested parties, at the time of execution, copies of all written instruments prepared by the professional bail bondsman;
- (8) Engaging in the business of professional bail bonding without being duly licensed as a professional bail bondsman under the provisions of this chapter; or
- (10) Any conduct of any professional bail bondsman which demonstrates improper, fraudulent, incompetent or dishonest dealings.

(c) The affirmative vote of a majority of the commission shall be necessary to revoke or suspend a license.

**Section 62-45-109.**

The commission is declared to be a quasi-judicial body and the members or its employees thereof are granted immunity from civil liability when acting in good faith and in the performance of their duties as described in this chapter.

**Section 62-45-110.**

Whenever any person claiming to have been injured or damaged by the gross negligence, incompetence, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business herein described files suit upon such claim against such licensee in any court of record in this state and recovers judgment thereon, such court may as part of its judgment or decree in such case, if it deems it a proper case in which so to do, revoke the defendant's license, which shall not be reissued to such licensee except upon unanimous vote of all members of the commission in favor of such reissuance, and only then after the lapse of a period of ninety (90) days from the date of such revocation.

**Section 62-45-111.**

(a) Every person licensed under this chapter shall maintain a definite place of business in this state and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to the principal office and all branch offices.

(b) (1) The sign shall be written in clear and legible letters and shall clearly show the person's name and indicate that the person is a professional bail bondsman.

(2) The sign shall be placed so that it can easily be observed and read by anyone entering the place of business. However, licensees maintaining a place of business in multistory office buildings shall be deemed to comply with this section if their names and professions are

displayed on the directories of the building in the usual fashion and manner of other tenants therein located.

(c) The commission may waive the requirements of subsections (a) and (b) in the event of a conflict with local ordinances, or other unusual circumstances.

**Section 62-45-112.**

A violation of this chapter or any rule or regulation of the commission is a Class C misdemeanor.

**Section 62-45-113.**

The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this chapter.

SECTION 4. Tennessee Code Annotated, Section 40-11-204, is amended by deleting such section in its entirety and by substituting instead the following:

The commissioner of commerce and insurance, or his designee shall receive, hear and determine the petition of any person who claims relief is merited on any recognizances forfeited, and so lessen or absolutely remit the same, and do all and everything therein as they shall deem just and right, and consistent with the welfare of the state, as well as the person praying such relief. This power shall extend to the relief of those against whom final judgment has been entered whether or not the judgment has been paid, as well as to the relief of those against whom proceedings are in progress.

SECTION 5. Tennessee Code Annotated, Section 40-11-405, is amended by deleting such section in its entirety.

SECTION 6. Tennessee Code Annotated, Section 40-11-126, is amended by adding the following as a new, appropriately designated subdivision:

( ) Accept payment for travel expenses incurred in pursuit of a person who has jumped bail;



SECTION 7. Tennessee Code Annotated, Section 40-11-128, is amended by designating the existing language as subsection (a) and by adding the following as a new subsection (b):

(b) A person who has been convicted of a felony or misdemeanor within ten (10) years of the date on which such person makes application for licensure shall not be eligible for licensure as a professional bail bondsman pursuant to title 62, chapter 45.

SECTION 8. The commissioner of commerce and insurance is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 9. For the purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 1998, the public welfare requiring it.